

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ROBERT ALSPAUGH JR.,

Plaintiff,

v.

Case No. 2:06-cv-111
HON. R. ALLAN EDGAR

REX MCCONNELL, et.al.,

Defendants.

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ORDER

Plaintiff Robert Alspaugh, Jr., a state prisoner in the custody of the Michigan Department of Corrections, brings this civil rights action under 42 U.S.C. § 1983. After initial review and screening of the complaint, Magistrate Judge Timothy P. Greeley has submitted a report and recommendation [Doc. No. 8] pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.1. and 72.2. The Magistrate Judge recommends that the plaintiff's complaint be dismissed in part pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A and 42 U.S.C. § 1997e(c) for failure to state a claim upon which relief may be granted. Plaintiff objects to the report and recommendation. After reviewing the record *de novo*, the Court concludes that the plaintiff's objections [Doc. No. 9] are without merit and are **DENIED**. The Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b) and W.D. Mich. LCivR 72.3(b). Accordingly, the plaintiff's claims against defendants Kangas, Cox, and Champion alleging a violation or deprivation of the plaintiff's right to due process protected under the Fourteenth Amendment to the United States Constitution are **DISMISSED WITH**

PREJUDICE pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A, and 42 U.S.C. § 1997e(c) for failure to state a claim upon which relief may be granted. Furthermore, the plaintiff's claims against defendant Cox alleging a violation of the plaintiff's right against the infliction of cruel and unusual punishment protected under the Eighth Amendment to the United States Constitution is **DISMISSED WITHOUT PREJUDICE** for failure by the plaintiff to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a).

Plaintiff may proceed and go forward with his remaining Eighth Amendment claims against defendants McConnell, Hofbauer, Aalto, Berhane, Ewers, Hill, Jordan, Kimsel, Unknown Parties, Unknown Quinn, Conklin, Mayotte, Kangas, Champion, and Tallio, and plaintiff shall timely effect service of process on these defendants pursuant to Fed. R. Civ. P. 4.

SO ORDERED.

Dated: August 30, 2006.

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE